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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:

G-I HOLDINGS INC., et al.,

Debtors.

Chapter 11

Case No. 01-30135 (RG) and
01-38790 (RG) (Jointly Administered)

Hon. Rosemary Gambardella, Chief U.S.B.J.

**AFFIDAVIT OF ANTHONY BARTELL IN SUPPORT OF DEBTOR'S
MOTION FOR APPROVAL OF SETTLEMENT WITH KWELM AND
THE BERMUDA FIRE & MARINE INSURANCE COMPANY LIMITED
IN LIQUIDATION**

STATE OF NEW JERSEY)

)

COUNTY OF ESSEX)

Anthony Bartell, being duly sworn, deposes and says:

1. I am an attorney at law of the State of New Jersey, and I am a member of the firm of McCarter & English, LLP. I am Special Counsel for G-I Holdings Inc. which, along with ACI, Inc., is a debtor and debtor-in-possession herein ("G-I" or the "Debtor"). I make this

Affidavit in support of Debtor's motion for approval of a settlement with KWELM and The Bermuda Fire & Marine Insurance Company Limited In Liquidation (collectively, "Insolvent Insurers"). I am fully familiar with the facts set forth herein.

2. I represent G-I, International Specialty Products Inc. ("ISP") and Building Materials Corporation of America d/b/a GAF Materials Corporation ("BMCA") (collectively, "Policyholders") in an insurance coverage action captioned *G-I Holdings Inc. et al. v. Hartford Accident and Indemnity Company et. al.*, Docket No. L-980-97, Superior Court of New Jersey, Law Division, Somerset County ("Environmental Coverage Action").

A. The Environmental Coverage Action.

3. Policyholders filed the Environmental Coverage Action to secure insurance coverage for defense and indemnity costs arising from over 120 allegedly contaminated sites located across the United States. Each Policyholder bears responsibility, and owns the insurance coverage rights, for different sites at issue in the Environmental Coverage Action. Policyholders' insurance policies provide separate liability limits (*i.e.*, "per occurrence limits," but not "aggregate limits") for each of these sites.

4. Through the Environmental Coverage Action, Policyholders seek coverage under insurance policies sold by, among other insurers, Certain Underwriters at Lloyds, London and Certain London Market Insurance Companies (collectively, "London Market Insurers"). A number of London Market Insurers subscribed to the insurance policies sold to Policyholders (hereinafter, "London Market Policies"), including KWELM, an acronym for the following five insolvent insurance companies: Kingscroft Insurance Company Limited, Walbrook Insurance Company Limited, El Paso Insurance Company Limited, Lime Street Insurance Company Limited and Mutual Re Insurance Company Limited. The Bermuda Fire & Marine Insurance Company Limited ("BFMIC") also subscribed to the London Market Policies.

B. The Insurance Insolvency Proceedings

5. Each of the KWELM companies has been adjudged insolvent under the laws of the United Kingdom and Bermuda, which means the companies lack sufficient assets to meet their liabilities, including estimated future claims. The courts in England and Bermuda approved a Scheme of Arrangement for KWELM in 1993 (the “KWELM Scheme”), and KWELM Management Services Limited (“KMS”) currently manages KWELM’s run-off. The KWELM Scheme established a September 29, 2004 Bar Date, by which all policyholders and other creditors needed to submit claims for payment from KWELM. Policyholders submitted their claim to KWELM on September 29, 2004.

6. The Bermudian and English courts also adjudged BFMIC insolvent. These courts approved BFMIC’s Amended Scheme of Arrangement on June 18, 2004 (the “BFMIC Scheme” and, together with the KWELM Scheme, collectively, the “Schemes”), and the BFMIC Scheme became effective on June 25, 2004. The BFMIC Scheme set the Bar Date for September 29, 2004, and Policyholders submitted their claim on this date to KMS, which also manages BFMIC’s run-off.

C. The Allocation of the Coverage

7. The Insolvent Insurers subscribed to London Market Policies which sit “excess” of substantial underlying coverage. Only a few of the sites where Policyholders incurred covered environmental liabilities implicate the Insolvent Insurers.

8. Due to the complexity of allocating environmental claims among primary and excess insurers, Policyholders retained a consultant, Mr. Stephen Sellick, to assist in presenting their claims to the Insolvent Insurers. Mr. Sellick acts as Managing Director of the environment and insurance claims practice at LECG, LLC. Mr. Sellick specializes in the management of complex quantitative analysis in litigation matters, particularly matters involving environmental

liability claims. Mr. Sellick's experience includes the development and analysis of insurance allocation methodologies using computer-based models for the allocation of multi-year losses to multi-year policy programs.

9. In assisting Policyholders with quantifying their claims under the London Market Policies subscribed to by the Insolvent Insurers, Mr. Sellick, at the direction of outside counsel to the Policyholders, McCarter & English, performed an allocation analysis involving Policyholders' triggered insurance policies, including the London Market Policies to which the Insolvent Insurers subscribed (the "Allocation Analysis"). Mr. Sellick's Allocation Analysis determined that only three (3) sites reach the Insolvent Insurers' excess coverage policies: the Linden site in New Jersey, the LCP site in New Jersey, and the Picillo site in Rhode Island. Based on the allocation of environmental liabilities among the three Policyholders, ISP bears responsibility for the environmental cleanup costs, has paid environmental cleanup costs, and owns the insurance coverage rights for each of these sites (hereinafter, "ISP Subject Sites"). Given Mr. Sellick's allocation analysis, when Policyholders filed claims in the insurance insolvency proceedings, they could only support a claim for coverage from the Insolvent Insurers for environmental liabilities at these ISP Subject Sites.

10. Mr. Sellick's Allocation Analysis confirms that estimated costs and liabilities arising from the Debtor and BMCA sites implicate none of the excess London Market Policies to which the Insolvent Insurers subscribed. The analysis demonstrates that Debtor and BMCA must incur, in most cases, millions of dollars in future additional costs before these sites can implicate the Insolvent Insurers' excess coverage. The past costs and future estimated liability risks at the Debtor and BMCA sites are not large enough to reach the Insolvent Insurers' excess coverage policies.

11. As a result, Policyholders' settlement with the Insolvent Insurers includes no consideration for environmental damages or costs incurred at sites for which the Debtor and BMCA bear responsibility for the environmental cleanup.

D. The Insolvent Insurers' Determinations and Settlement

12. The Insolvent Insurers reviewed Policyholders' claims and, on March 24 and 25, 2005, issued notices of determination which valued the claims at less than the amount asserted by the Policyholders. (To the extent necessary to adjudicate the Motion, a true copy of the Insolvent Insurers' determinations will be provided to the Court under seal and will be provided to the Committee and other parties under a confidentiality agreement.)

13. Policyholders rejected the Insolvent Insurers' determinations, and the parties thereafter entered into intensive settlement negotiations. These negotiations included, among numerous other communications, an in-person meeting with the Insolvent Insurers' representatives from New York and London, during which Policyholders produced extensive supporting information on the actual past costs, and estimated future liability risks, arising from the ISP Subject Sites.

14. The Insolvent Insurers terminate all coverage obligations to the Policyholders upon their Scheme payments. Policyholders, therefore, could negotiate no "coverage-in-place" settlements with the Insolvent Insurers for future costs arising from its environmental sites. The Insolvent Insurers, for this same reason, refused to pay for speculative and/or uncertain future liability risks at Policyholders' environmental sites.

15. Policyholders, therefore, needed to demonstrate to the Insolvent Insurers the near certainty of their estimated future liability risks at the ISP Subject Sites. The Insolvent Insurers eventually accepted a substantially greater portion of Policyholders' estimated future liability risks at the ISP Subject Sites.

16. The parties' settlement negotiations resulted in an agreement acceptable to both parties. (To the extent necessary to adjudicate the Motion, a true copy of the Insolvent Insurers' revised determinations will be provided to the Court under seal and will be provided to the Committee and other parties under a confidentiality agreement.)

17. On November 9, 2005, KWELM announced updated payment percentages. These percentages will result in KWELM's payment of approximately eighty percent (80%) of the proposed amount for the ISP Subject Sites. In February 2006, BFMIC also increased its payment percentage from 50% to 82%. The Insolvent Insurers, moreover, expect to make a further distribution of between one and three percent as they collect residual reinsurance.

18. Policyholders have opened an interest bearing escrow account with JP Morgan Chase Bank, N.A. ("JP Morgan Chase"). This escrow account, with JP Morgan Chase acting as escrow agent, will hold all funds paid by the Insolvent Insurers (the "Escrowed Settlement Amount") pending the Bankruptcy Court's ruling on this approval motion.

E. The Risks of Not Pursuing the Settlement.

19. Had Policyholders not resolved their coverage claims with the Insolvent Insurers, then the Insolvent Insurers would have referred Policyholders' claims to the "Scheme Adjudicator," in London, for final disposition. The Schemes give the Adjudicator final say over the value of Policyholders' claims with no right of appeal. The Schemes identify Ivor Kiverstein as the Adjudicator. The Insolvent Insurers advised that as of the date of their settlement with Policyholders, the Adjudicator had resolved no disputed claims. Subsequently, however, Policyholders were advised that a company whose claim had been assessed at zero sent its claim to adjudication and that the Adjudicator affirmed the evaluation (at zero) and assessed the company 50% of the costs for the adjudicatory process.

20. Policyholders, therefore, have almost no basis upon which to predict how Mr. Kiverstein might value Policyholders' claims. However, given Mr. Kiverstein's actions with respect to this other contested claim, it is likely that the adjudication process would have affirmed the determination made by KWELM as to the environmental award with a possibility that plaintiffs also would be charged with the administrative costs.

21. Moreover, the Schemes give the Adjudicator sole discretion to resolve a disputed claim based upon the Insolvent Insurers' file or to request further written submissions from the parties. The Schemes forbid oral presentations. The Schemes also require the Adjudicator to "endeavor to resolve each dispute within 90 days of the matter being referred to him." Given this time limitation, Mr. Kiverstein probably would have ruled on Policyholders' objections based solely on the Insolvent Insurers' file.

22. The Schemes allow the Adjudicator to value claims below the amount determined by the Insolvent Insurers. Had Policyholders opted for adjudication, therefore, Mr. Kiverstein could have valued their claim at an amount lower than the Insolvent Insurers' initial determination. The Adjudicator also could have charged Policyholders for his time and expenses if he ruled against their challenge to the Insolvent Insurers' determinations.

23. Given the uncertainties presented by the adjudication process, and the Insolvent Insurers' acceptance of most of Policyholders' claims, Policyholders made a reasoned decision to accept the Insolvent Insurers' substantially increased revised determinations.

24. Pursuant to 28 *U.S.C.* § 1746, I swear under penalty of perjury that the foregoing is true and correct.

/s/ Anthony Bartell
Anthony Bartell

Executed on September 5, 2006

Subscribed and sworn to before me
this 5th day of September, 2006.

/s/ Charlotte Majette
Notary Public